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JUN 20 1994

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Implementation of Sections 3(n) and 332 of) GEN Docket No. 93-252
the Communications Act)
)
Regulatory Treatment of Mobile Services)

COMMENTS OF OMNIPOINT COMMUNICATIONS, INC.

Omnipoint Communications, Inc. ("Omnipoint"), by its attorneys, files these comments in response to the Further Notice of Proposed Rulemaking ("FNPRM") released on May 20, 1994 in the above-referenced proceeding. Omnipoint urges the Commission to simplify the licensing and application rules for broadband PCS licensees and substantially modify the proposed application form, attached to the FNPRM as Exhibit A,¹ by adopting a blanket license approach. For good reason, blanket licenses are required by the current PCS license rules.

Without blanket licenses, the proposed FCC Form 600 would require broadband PCS applicants to file site-specific information for tens of thousands of sites. According to the form and to its instructions, a broadband PCS applicant would be required to file Schedules A, C, and F. Schedule C, entitled "Technical Data," requires disclosure of the exact transmit site coordinates, the antenna height above average terrain and height above ground level, the transmitter's maximum effective radiated power ("ERP") and ERP in the eight cardinal directions. Schedule F requires the submission of the data for a full Part 17 analysis of each site, including antenna-structure height and ownership information, nearest aircraft landing area, and FAA filing information.

¹ These Comments will focus on paragraphs 106 to 112, and proposed Form FCC 600 (Appendix A), of the FNPRM.

In addition to the burden of filing thousands of applications, the pre-approval process injects tremendous delay and inflexibility into the operator's system planning. A site specific application means that the operator needs pre-approval by the Commission before the applicant can even build its base station sites. An applicant/licensee has to wait for pre-approval of its initial service sites and then, before it can add or modify a single additional site, it has to file a license modification for agency pre-approval. In those months of lag time waiting for pre-approval, the planning process is held in "limbo;" the construction crews cannot build and the operator cannot offer the promise of a seamless PCS service within its license area. The possibility of regulatory delay, an error or modification to the site application, or a subsequent system build-out change adds even more delay and more uncertainty into the process.

Finally, the proposed site pre-approval process adds both delay and uncertainty to PCS given that the vast number of licenses will be allocated by auction. With site-specific applications, auction winners will have to engage in months, perhaps a year, of system planning before they will be prepared to file an application and receive a license. This is just too long for a business, after it has paid the auction price, to operate on the mere expectation of a license and this fact may adversely skew auction participation.

I. PRE-APPROVAL FOR SITES THAT CONFORM TO THE COMMISSION'S RULES SHOULD NOT BE REQUIRED.

A. Blanket Licenses, As Provided For In The PCS Rules, Ensure Compliance With The Commission's Rules In Wide-Area Services.

The Commission's PCS application rules clearly state that blanket licenses, not licenses for specific site locations, will be issued.

§24.11 Initial authorization.

(a) An applicant will file an application for an initial authorization in each market and frequency block desired.

(b) Blanket licenses are granted for each market and frequency block. Applications for individual sites are not needed and will not be accepted.

47 C.F.R. §24.11 (emphasis added).² This rule does not seem to permit the site-specific applications contemplated in Schedules C and F of proposed Form 600. The Commission's PCS frequency interference rules also reflect a blanket license approach. Section 24.237 of the Commission's rules states that while all PCS operators must coordinate with incumbent microwave users prior to operating, "[t]he results of the coordination process need be reported to the Commission only if the parties fail to agree."³ Further, this rule states that "the Commission will be involved in the coordination process only upon complaint of interference from a fixed microwave licensee."⁴ Consistent with blanket licensing, the Commission has stipulated that the burden is on the licensee to design a system which complies with either the interference standards stated in the rules or the agreement reached by the parties.⁵ Therefore, the PCS rules do not interpose the Commission as a proactive monitor of potential service rules violations or interference conflicts; the PCS application procedures proposed in the FNPRM should not do so either.

Clearly, the Commission adopted blanket licensing for broadband PCS because, once the microwave incumbents are negotiated with and/or relocated, the PCS licensee will be the only PCS operator with a right to that particular 10, 20, 30, or even 40 MHz over a relatively large license area. Under these conditions, there is no reason for the Commission's staff to oversee the details of spectrum management for the licensee. This is in contrast to other services, such as CARS microwave, where many licensees in a single region are sharing spectrum or operating within tight physical constraints. In those services, the licensee may only operate according to a

² This rule was obviously intended to apply to base stations. The Commission has considered blanket licenses for both PCS mobile end-user units and PCS base stations for at least four years. See Notice of Inquiry, GEN Docket No. 90-314, 5 FCC Rcd. 3995, 3998-3999 (1990).

³ 47 C.F.R. §24.237(b).

⁴ Id., (emphasis added).

⁵ In the case of the interference conflicts, the rules provide even more flexibility. Under the rules, interference itself is not prohibited, so long as the PCS operator and the microwave incumbent have reached an agreement as to the interference. 47 C.F.R. §24.237(b).

defined transmission beam path and so the Commission requires detailed site-specific information to define the terms of the authorization itself. That is not the case in broadband PCS, where the operator is licensed a block of spectrum and it may employ innovative and alternative technologies to deploy its service.

The Commission has adopted similar blanket licensing provisions for other services. In IVDS, the Commission chose blanket licensing as the general rule. IVDS licensees with systems that fall outside of the general rule must seek individual licenses for those sites, but "[i]t will be up to the IVDS licensee to determine if a [cell transmitter station] must be individually licensed."⁶ In nonvoice/nongeostationary (NVNG) MSS, the Commission also adopted blanket licensing for transmitting earth station facilities and, to a more limited extent, the space stations.⁷ The Commission has tentatively concluded that the NVNG space station blanket license rules should be adopted for MSS Above 1 GHz LEO systems as well.⁸ The Commission also permits blanket licensing of end-user facilities under an SMR's base station authorization.⁹ As the Commission explained, the base station licensee remains responsible for end-user compliance of the FCC's rules.¹⁰ In addition, the base station licensee makes a determination if the end-user facilities are (1) in a "quiet zone," (2) require FAA notification, or (3) may have a significant environmental impact. If the licensee determines that any of the three apply, the end-user facility

⁶ Report and Order, GEN Docket No. 91-2, 7 FCC Rcd. 1630, n.105 (1992), *recon. granted and denied*, 7 FCC Rcd. 4923 (1992), *further recon. granted and denied*, 8 FCC Rcd. 2787, 2788 ("an IVDS licensee may submit its application for a blanket license under one call sign, regardless of the number of CTS base stations it intends to construct").

⁷ Report and Order, CC Docket No. 92-76, 8 FCC Rcd. 8450, 8454 (1993). With respect to the earth stations, "a single licensee will be responsible for the operations of a specific number of technically identical units." Id.

⁸ Notice of Proposed Rulemaking, CC Docket No. 92-166, 9 FCC Rcd. 1094, 1134 (1994).

⁹ Report and Order, PR Docket No. 92-79, 7 FCC Rcd. 5558 (1992).

¹⁰ One of the reasons cited by the Commission for this rule change was that "[e]ach year ... we receive approximately 32,500 applications from end users for new licenses and 7,500 applications for renewals of licenses." Id. at 5559. Unless a blanket license approach is implemented for PCS, the Commission can expect at least as many PCS site applications.

must be individually licensed. This general approach to PCS base station licensing would be a vast improvement over the proposed Form.

Specifically, Omnipoint proposes that the FCC Form 600 be modified to reflect that broadband PCS operators need only file Schedule A.¹¹ So long as its system conforms to the requirements of the Commission's PCS rules and general license rules, it need not file applications for individual sites.¹² The following chart demonstrates some of the specific information required on the proposed Schedules C and F and how the existing Commission rules, which all operators must comply with, already regulate the licensee.

<u>SITE INFORMATION FOR APPLICATION</u>	<u>FCC RULE</u>
antenna coordinates (Sched. C, qu. C8-C13)	§24.236 (service border field strength limits)
HAAT (Sched. C, qu. C17)	§24.232 (maximum HAAT)
antenna height, AGL (Sched. C, qu. C18)	§24.232 (maximum HAAT)
maximum ERP (Sched. C, qu. C19)	§24.232 (maximum radiated power)
radial data (Sched. C, qu. C20 to C23)	§24.232 (maximum radiated power and maximum HAAT)
Antenna structure height and FAA clearance data (Sched. F)	§17.1 <u>et seq.</u>

¹¹ On April 28, 1994 Omnipoint filed a PCS license application using FCC Form 401, in accordance with the Commission's invitation to file. See "Commission Invites Filing of Broadband Personal Communications Service Pioneer's Preference Application," Public Notice (February 25, 1994). Omnipoint assumes that the application process proposed in the FNPRM would not apply to Omnipoint's pending application. In any case, the changes proposed herein would make it unnecessary to apply the new procedures to Omnipoint's application.

¹² The IVDS and VSAT application rules establish categories of sites that must be individually licensed, especially sites that exceed a given height level. The PCS service rules also establish a 300 HAAT rule for antenna structures. Omnipoint believes that so long as PCS towers do not exceed the 300 HAAT service rule, individual licensing should not be required. See 47 C.F.R. 24.206.

It is simply unnecessary to force PCS operators to recite exactly how every one of potentially thousands of facilities will comply with the FCC rules, once the operator certifies that it will fully comply.¹³

Under the blanket license approach, the Commission retains all of its authority to enforce its rules or to impose any sanctions or penalties for noncompliance by a licensee.¹⁴ Ultimately, complaints from private parties and the Commission's field office work are the best assurance that operators comply with the rules, not site-specific applications. For example, the interference complaint process has, in the past, worked well to identify rules violations and the Commission has responded expeditiously in those cases.¹⁵

B. Site-Specific PCS Applications Are Contrary To The Public Interest Because They Will Result In Needless Delay And Expense.

The Commission has recently reiterated that the highest priorities for the implementation of PCS are rapid deployment and competitive delivery.¹⁶ Implementing these goals is critical both to reduce the existing cellular duopoly prices for mobile service and to allow PCS to establish a foothold in the developing wireless market before it is too late for new entrants. The Commission can help the competitive delivery of PCS by reducing the costs and delays of the PCS application procedure.

¹³ In fact, the proposed Form 600 already includes many certifications as to compliance. For example, at question 28 of Schedule A, the Commission asks whether the applicant's proposed system would have a significant environmental impact, as defined by 47 C.F.R. §1.1307. Sensibly, the applicant is not forced to prove the negative by defining the extent, no matter how trivial, of the environmental impact. Rather, the applicant certifies as to the environmental impact and, if the impact is significant, it provides the necessary detailed showing. We urge the Commission to modify the application to adopt similar certifications for other site specific questions, and eliminate Schedules C and F for broadband PCS applicants.

¹⁴ 47 U.S.C. §§501 to 503.

¹⁵ See, e.g., In the Matter of Jan Mar Courier, Inc., 8 FCC Rcd. 7570 (1993); "Notices of Apparent Liability Issued for Violations Related to Operating Without Proper Authorization," FCC Daily Digest (November 2, 1993).

¹⁶ These two goals had significant impact on the Commission's recent reconsideration of the PCS service rules. See, e.g., Memorandum Opinion and Order, GEN Docket No. 90-314, FCC 94-144, ¶¶ 1 to 10 (released June 13, 1994).

1. Site-Specific applications will cause significant delay.

Each broadband PCS applicant, especially those for MTA licenses, will have hundreds and even thousands of sites to construct. Omnipoint estimates that to provide complete coverage of the New York MTA able to compete with cellular, it will need to install as many as 1,600 base station sites. According to several consultants' estimates, coverage of the New York BTA alone will require an operator to install 600 to 1,000 sites. If site-specific applications are required for each site, significant delay would occur for several reasons:

- * If the broadband auctions occur in stages, with significant periods of time between each stage, licensees that want to aggregate spectrum auctioned in various stages will not be able to develop a system plan until the auctions for all of the licenses they wish to bid on are completed. Because they will have no site specific final plans, these operators will not be able to get their license for the spectrum awarded to them in the early stage until the later stage auctions are completed.
- * After the applicant is finished with the auctions, it will take up to a year for operators to finalize site plans. During this time, the Commission cannot issue licenses to auction winners in the planning process. This is also inconsistent with the Congressional mandate to begin issuing licenses expeditiously.
- * Applicants will be required to file a separate Schedule C and F for each site. This means that no sites can be turned on until they receive FCC approval.
- * Communications Act would impose a 30-day minimum comment period for each site application filed. 47 U.S.C. §309(b).
- * Competitors may abuse process by filing objections to sites as build-out occurs in their area.
- * The flood of tens of thousands of site-specific applications will overburden the FCC's resources and cause additional processing delay.

2. Site-Specific applications will cause significant expense and higher PCS prices for the consumer.

Thousands of applications, as opposed to a single blanket application, raise the PCS operators costs and overburden the FCC's limited resources. With blanket licenses, these costs are avoided even though the applicant remains subject to the same regulations as under a site-

specific application approach. There is simply no reason to impose this cost on PCS operators, the Commission, and, ultimately, the public. Some of the sources of needless cost are:

- * The PCS operator's application fees, administrative costs, attorney's fees, etc., all add to the cost of doing business.
- * The application process, with the possibility of rejection, error, modification, adds uncertainty and so raises the cost of capital.
- * The flood of applications will drain the Commission's resources.
- * The delay makes it even harder for PCS entrants to provide viable competition to cellular and lower prices to consumers.

III. CONCLUSION.

For these reasons, Omnipoint urges the Commission to significantly modify the proposed Form 600 in order to make it consistent with the blanket licensing provisions of the Commission's PCS rules. Blanket licenses for PCS operators will serve the public interest by avoiding tremendous delay and expense in the deployment of PCS.

Respectfully submitted,

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Date: June 20, 1994